Supreme Court, U.S.
FILED
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No.___

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

SUSANA M. PACIFICO, Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT, Respondents

On Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

Robert Stephen Bolinger
Counsel of Record

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16315 Piuma Avenue
Cerritos California 90701

19 pp

QUESTION PRESENTED

Whether the long standing "Mail Box" rule is still the law of the land, especially in rela tion to present communication methods.

Whether the interests of the Government in the efficient operation of the court clerks office should take precedence over a litigant's right to their day in court.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

SUSANA M. PACIFICO, Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Susana Pacifico Respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Federal Circuit in this case.

DECISION BELOW

The opinion of the Court of Appeals is attached hereto. On April 21, 1994 the court reaffirmed its decision and removed this case from the docket as having not been filed timely.

JURISDICTION

The Court of Appeals entered its final decision April 21, 1994.

The Jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATEMENT

The Petitioner in this case, Susanna Pacifico appealed from a decision of the Office of Personnel management. The Office of Personnel Management sent the decision to the wrong address, therefore the Appellant's representative never saw the decision nor the appeal form, and the OPM forwarded the decision to the appellant herself which arrived on the 4th of July weekend approximately seven days late. Appellant then sent her appeal to the Merit Systems Protection Board (by facsimile) on July 21, 1992.

The Agency claimed untimeliness. A hearing was held in Los Angeles on October 19, 1992, at

which time Pacifico presented her case on the merits and addressed the claim of untimeliness.

On November 18, 1992 the Administrative Law Judge of the MSPB, without addressing the merits of the case, ruled against Pacific and dismissed the appeal.

Pacifico timely appealed for reconsideration by the MSPB on December 23, 1992. The MSPB denied reconsideration on March 19, 1993 and an appeal was taken to The United States Court of Appeals for the Federal Circuit. The Appeal was mailed postage prepaid on April 15, 1993 three full days prior to the expiration of the appeal date. The case was docketed, briefs were submitted and the case was set for oral argument on April 4, 1994. On March 21, 1994 the Clerk of the Court of the Court of Appeals for the Federal Circuit removed the case from the docket as having been filed untimely. Appellant

filed a motion for reconsideration on April 7, 1994. On April 21, 1994 the Court of Appeals for The Federal Circuit denied the motion and entered judgment. On May 4, 1994 the Appellant filed a motion for further reconsideration, which was denied.

REASONS FOR GRANTING THE PETITION

I. The Decision Of The Court Of Appeals For The Federal Circuit Conflicts With The Holding Of Other Courts As To The Proper Application Of The Mail Box Rule And The Role Of The File Stamp.

It has been a long held principal of the Law of this country, both State and Federal that once a document is placed in the mails properly addressed it is deemed to be delivered, and that it will reach its destination in a timely manner. This

is the "Mail Box Rule". The rules of this court state that the Post Mark on a document filed with this court is controlling as to the date of filing, the same is true with the Internal Revenue Service. There is a long line of cases through the Federal judicial system that upholds this time honored doctrine.
In RE: Hobbs, 141 B.R. 466 (N.D. G . 1992). In RE: Schepps Food Stores Inc. 152 B.R. 136 (S.D. Tex 1993) Phillips v Riverside Inc. 796 F. Supp 403 (E.D. Ark 1992) Borden Company v.. United States 134 F. Supp 387, 391 (1955 DCNC); Federal Deposit Ins. Corp v. Schaffer 731 F2d 1134, 1137 (1984 CA 4th); Charlson Realty Company v. United States 384 F2d 434 (1967 USCC).

In the Charlson Case (Citations Omitted) the fact pattern was quite similar to the one presently before this court, whereas

the file stamp indicated a date past the time for filing. The court in Charlson went on to say:

File stamp on...petition by court house employee is nothing more than evidence of method of procedure, habit and custom followed by officers of court in handling papers to deliver them in proper discharge of their official duties, and such evidence adds nothing to the presumption that public officers perform the duties of their office in a proper manner and such presumption will not overcome nor rebut presumption of arrival of a letter in due course in mails. This is the same situation that faces the Petitioner in this case, all of the declarations show that the Appeal was properly addressed and placed in the United States Mail in Santa Ana, California on April 15, 1993, which was before the expiration of the statute of limit-

ations for the filing of the appeal. The file stamp was for May 10, 1993. Which only indicates when it was stamped, not when it was actually received. The Court of Appeals for the Federal Circuit appears to be following a different standard than the rest of the Federal Judicial system. They have chosen one that apparently disregards the Mail Box Rule and the Charlson Case (Citations Omitted) as well as the decisions of other federal courts and branches of the National Government, including the rules of this court (Rule 29.2).

Senior Judge Jones, in his concurring opinion, in the Charlson case Charlson Realty Company v. United States 384 F2d 434 (1967 USCC) perhaps stated the case best when he said:

This rule of the effective use of the mails is fair to everyone and unfair to

no one...The use and reliance upon the United States mail service is almost universal. People everywhere use its facilities. The service is essential to modern business operations.
An attitude that falls in line with the intentions of this court as expressed in Supreme Court Rule 29.2

II. The Decision Of The Court Of Appeals For The Federal Circuit Denies Petitioner Her Day In Court.

Certainly one of the most cherished rights of the American citizenry is that of one's day in court---this, perhaps more than anything else separates our form of government from any other on the face of the earth.

This court has upheld this doctrine numerous times. The constitution recognizes higher values than speed and ef-

ficiency: the bill of rights in general, and the due process clause in particular, were designed to protect the fragile values of vulnerable citizenry from the over bearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more than mediocre ones.

(S.CT.) Stanley v. Illinois 92 S Ct 1208; 405 U.S. 645; (S.Ct. 1981) Parratt v. Taylor (1981) 101 S.Ct. 1908, 451 U.S. 527.

The courts have an undeniable interest in maintaining the smooth and proper functioning of their own system but that right can not in all good conscience be held comparable with the right of the citizens to redress their grievances.

The court in Charlson Realty Company v.

United States 384 F2d 434 (1967 USCC) stated it as well as any when it said that the right to a day in court is one of the most highly prized rights of any citizen and that the courts usually manage to avoid denying someone their day in court. The petitioner has been denied her day in Court.

III. **The Question Presented Is Important**

The Petitioner is now left with no avenue to redress her grievances. She has been denied the opportunity to have her case fairly judged on its merits in the open forum of the courts. She has been denied her opportunity to be heard; a pillar of our system of government and laws.

The question also presents an important issue as to the validity of the Mail Box Rule and its survivability. Is this rule,

and subsequently rule 29.2, of this court still the standard, especially in the glaring light of modern technology that is overtaking society and business.

In sum, this court can address the issue of uniformity in the application of the Mail Box rule and reaffirm its importance and stability in our constantly changing world.

The court can also reaffirm its rulings in such cases such as (S.CT.) Stanley v. Illinois 92 S Ct 1208; 405 U.S. 645; (S Ct. 1981) Parratt v. Taylor 101 S.Ct. 1908, 451 U.S. 527.that the rights of the individual shall prevail when balanced against the interests of the Government for efficiency and smoothness of operation.

Respectfully Submitted

R. Stephen Bolinger

R. Stephen Bolinger
Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

PACIFICO V MSPB, 93-3346

ORDER

Upon further consideration of the petition for review, it appearing that it was not filed within the time permitted by law, it is

ORDERED that the petition for review be, and the asme hereby is, DISMISSED.

FOR THE COURT

March 18, 1994 Francis X. Gindhart
Clerk

CC: R. Stephen Bolinger, Esq.
Sherry Armstrong

ISSUED AS A MANDATE: April 21, 1994

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

93-3346

SUSANA M. PACIFICO

Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT

Respondent

PETITION FOR RECONSIDERATION

Law Office Of R. Stephen Bolinger
16315 Piuma Avenue
Cerritos California, 90701

The Petitioner does hereby Petition this court for reconsideration of its order of March 18, 1994.

DENIED. ON RECONSIDERATION, ANY CHANGE DENIED.

FOR THE COURT,

4-21-94 Francis X. Gindhart
Date FRANCIS X. GINDHART
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

93-3346

SUSANA M. PACIFICO

Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT

Respondent

MOTION FOR FURTHER RECONSIDERATION

Law Office Of R. Stephen Bolinger
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REJECTED. Repetitive motions to reconsider are not authorized.
REJECTED

FOR THE COURT,

5/5/94
Date

FRANCIS X. GINDHART
Clerk